

In Re: Surajmull Munglechand

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Court : Kolkata

Decided On : Aug-25-1921

Reported in : AIR1921Cal403(1),70Ind.Cas.463

Judge : Greaves, J.

Appellant : In Re: Surajmull Munglechand

Judgement :

Greaves, J.

1. This is an application on behalf of Kissen Das Banthia, the adjudicating creditor, asking for an order that Madhoram Rahumall do produce a certain deed of assignment executed by the insolvents in favour of Raghunath Das Sivalal of all debts due to the insolvents and also another deed referred to in the summons executed by Raghunath Dass Sivilal assigning their interest under the first deed may be declared void, and in the alternative that Raghunath Dass Sivial do pay to their official Assignee a sum of Rs. 30,000 received by them as consideration for the assignment executed by them above referred to.

2. A preliminary objection was taken that this application, which is said to be made by virtue of the provisions of Sections 55 and 56 of the Presidency Towns Insolvency Act, can only be made by the official Assignee. I think the objection is well founded and that such an application should be made by the official Assignee in whom the property of the insolvent is vested and not by a creditor. If

the official Assignee, when asked to take action, refuses it may be that with the leave of the Court a creditor may make such an application but I have no evidence before me either that the Official Assignee has been asked to take action or that he has refused to move. This being so I think the preliminary objection must prevail and that on the materials before me I must refuse the application.

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